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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,454	09/15/2008	Michel Delaage	2756.002	9212
23405 7590 09/29/2011 HESLIN ROTHENBERG FARLEY & MESTI PC 5 COLUMBIA CIRCLE ALBANY, NY 12203				
EXAMINER				
LAM, ANN Y				
ART UNIT		PAPER NUMBER		
1641				
MAIL DATE		DELIVERY MODE		
09/29/2011		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/599,454

**Applicant(s)**

DELAAGE ET AL.

**Examiner**

ANN LAM

**Art Unit**

1641

**Period for Reply** -- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 5) ☒ Claim(s) 1-36 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☒ Claim(s) 1-36 are subject to restriction and/or election requirement.

**Application Papers**

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-850)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-7, 9-16, 18-26, 32-36, drawn to an incubation device for serology or histology slides.

Group II, claim(s) 8, drawn to an incubation device for serology or histology slides.

Group III, claim(s) 27-29, drawn to a serological analysis method.

Group IV, claim(s) 30, drawn to a histological method.

The inventions listed as Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The technical feature linking groups I-IV appears to be that they all relate to the a device comprising: a solid support having a level surface on its upper face in which at least one alveolus is disposed, the alveolus having an opening on the surface of the support, the opening having an area greater than an area of a reactive zone on the slide and smaller than an area of a surface of the slide; wherein the base of the alveolus has at least two orifices allowing circulation of fluid(s) in the alveolus; and a contour of the

opening of the alveolus is provided with means which make it possible to ensure a seal; and wherein the slide and support cooperate to form a sealed chamber.

However such device is disclosed by Focht (U.S. Patent No. 4,974,952). Focht discloses a device including a cover slip unit (13) which comprises a thin transparent disc member (24) which is dimensioned to be received within the shallow recess (21) in the chamber frame member (17); wherein, the upper gasket member (22) is disposed in an intermediate fluid tight sealing relationship between the disc member (24) and the chamber frame member (17). Column 3, lines 58-68.

As shown in figure 11, the device includes a fluid passageway (100) which comprises in general: the horizontal fluid port (19"); the vertical fluid port (19"); the fluid aperture (28) in the lower sealing gasket member (25); the fluid infusion groove (30) in the slide member (29); and the infusion chamber (101) which is defined by the bottom of the cover slip unit disc member (24); the top of the slide member (29) and the periphery of the lower sealing gasket member (25); wherein, the thickness of the lower gasket member (25) defines both the depth and the volume of the fluid infusion chamber. Column 5, lines 62-66.

Therefore, the technical feature linking the inventions of groups I-IV does not constitute a special technical feature as defined by PCT Rule 13.2, as it does not define a contribution over the prior art.

The special technical feature of Group I is considered to be the structural elements comprising a slide locator means for positioning and/or locking a serology or histology slide such that the reactive zone of the slide is located in front of the opening

of the alveolus on the surface of the support, wherein the slide and the support thus cooperates to form a sealed incubation chamber.

The special technical feature of Group II is considered to be the structural elements comprising means for guiding vertical movement of the moveable support towards the fixed cover to make it possible to form a sealed incubation chamber between the alveolus and the slide when the slide is in position, wherein the reactive zone of the slide is contained within the incubation chamber.

The special technical feature of Group III is considered to be the steps comprising incubation of a serology slide comprising a reactive zone having a series of deposits from infectious, pathogenic, allergenic or autoantigenic agents with a sample of serum from a patient.

The special technical feature of Group IV is considered to be the steps comprising incubation of a histology slide comprising a reactive zone having a tissue sample from a patient with a solution of specific antibodies.

Accordingly, Groups I-IV are not so linked by the same or a corresponding special technical feature as to form a single general inventive concept.

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANN LAM whose telephone number is (571)272-0822. The examiner can normally be reached on Mon.-Thurs. 9-7:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Shibuya can be reached on 571-272-0806. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ann Y. Lam/  
Primary Examiner, Art Unit 1641